



In the Matter Of

Restoring Internet Freedom

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WC Docket No. 17-108

Written Ex Parte of the Benton Foundation

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On May 17, 2017, the Federal Communications Commission ("Commission") adopted a Notice of Proposed Rulemaking (NPRM) entitled Restoring Internet Freedom. In that NPRM, the Commission asks about broadband Internet access service (BIAS) providers' voluntary commitments to an Open Internet as asks about eliminating network neutrality rules (see ¶180).

Prior to the Commission's adoption of the NPRM, the NCTA ran a full-page ad in the Washington Post signed by 21 BIAS providers "to again reaffirm our strong commitment to an open internet, and to continue delivering a fast and vibrant online experience to consumers."

Kate Cox, writing for The Consumerist, followed up with signees, asking if the companies would be willing to put their pledge into binding contracts with their customers (see attached **18 Cable Companies Promise To Support Net Neutrality; None Will Guarantee You In Writing**). None of the companies told Cox that they are willing to make such a commitment.

The Benton Foundation urges the Commission to retain strong, enforceable Open Internet rules that ensure that BIAS consumers can access the content and use the applications, services, and devices of their choice.

Sincerely,

_____/s/____

Kevin Taglang

Benton Foundation

May 24, 2017

CONSUMERIST



18 Cable Companies Promise To Support Net Neutrality; None Will Guarantee You In Writing

May 19, 2017

3:24 pm EDT

By [Kate Cox](#)

[@kcoxdc](#)

PINKY SWEAR

NET
NEUTRALITY

NCTA

Every time the net neutrality fight comes back around, we hear the same tired promise from the cable industry: We love net neutrality, we will promise you net neutrality, just don't pass or enforce any laws that actually require us to do it.

As we embark on fighting this fight for the second time in just the last three years, industry is back at it, making the same promise. They're saying it in press statements, on their websites, through their executives, and in [utterly laughable](#) videos: We guarantee you will always have an open internet.

But do they actually mean it?

The Promise

The NCTA is the cable industry's largest trade association (read as: lobbying group). It used to stand for National Cable Television Association, but in Sept. 2016 it seemed to realize what a legion of cord-cutters already has — that "cable television" is the wave of the past, not the future — and so rebranded to "The Internet & Television Association" while still being the NCTA.

Its **membership roster** is lengthy, including dozens of massive cable and content companies you've almost certainly heard of (Comcast, HBO, Starz) and dozens of smaller ones you likely haven't (Africa Channel, Midco, Sjoberg's).

The day before the FCC voted to try and kill off net neutrality, the organization **ran a full-page ad** in the Washington Post signed by 21 cable providers large and small.

As the NCTA **explained in a blog post**, the point of the ad was "to again reaffirm our strong commitment to an open internet, and to continue delivering a fast and vibrant online experience to consumers."

"We've always been committed to an open internet that gives you the freedom to be in charge of your online experience. And that will not change," the ad says.

It concludes, "An open internet means that we do not block, throttle or otherwise impair your online activity. We firmly stand by that commitment because it is good for our customers and good for our business."

A total of 21 of the NCTA's member companies — Altice (Optimum, SuddenLink), Armstrong, Boycom, Buckeye Broadband, Cable ONE, Charter, Comcast, Cox, Eagle Communications, GCI, MCTV, Mediacom, MetroCast, Midco, RCN Grande, Service Electric Cablevision, Shentel, Sjoberg's Inc, TDS, Vast Broadband, and Vyve Broadband — signed on to the ad.

The Ask

If all those companies really stand by that, there's no real reason for them to want the FCC to kill off the rule that says they have to.

But if somehow they can separate how badly they want to keep providing you net neutrality from how badly they still

want the FCC to kill it off, well, surely they're willing to make a binding promise to their customers, right? If these companies really mean it, we reasoned, surely they'd be willing to commit to it.

So that's what we asked: Is that a pledge your company would be willing to put into writing in binding contracts with customers who sign up for and use your internet services?

The Results

We were unable to reach three of the 21 companies (MetroCast, Service Electric, and TDS), so they're excused from our tally for now. But on Wednesday, the day the ad appeared, we were able to send an email to or leave a phone message with 18 of the 21 businesses that signed it.

48 hours after we reached out, 14 companies never wrote or called back. A total of four companies, from those 18, responded in any way to our messages — mostly without comment.

Representatives from Armstrong and Vyve replied to our request, but told us their companies declined to comment. And an employee from Boycom eventually responded to tell us who would be the right person to speak with, but added that she would be unavailable to talk to until next week.

Cox Communications, then, becomes the one and only company out of all 18 to reply to us meaningfully in any way — and their statement still leaves a great deal to be desired.

"Cox has always been committed to providing an open Internet experience for our customers and reversing the classification of Internet services will not change our commitment," a representative for the company told Consumerist.

"We do not block, throttle or otherwise interfere with

consumers' desire to go where they want on the Internet. A stated pledge like that in our contracts with customers is something we are looking into as the debate continues."

Comcast did not even acknowledge receipt of multiple requests from Consumerist reporters for this story, but the company's head lobbyist David Cohen won't shut up about the company's love of neutrality. Yesterday, he **wrote again** that "We do not and will not block, slow down, or discriminate against lawful content," without revealing that Comcast *must* follow these rules through 2018 because of a condition put by the FCC on its acquisition of NBCUniversal. You'll also notice that Comcast refuses to say it won't *prioritize* certain content, which is exactly what ISPs want to do: Charge money to deep-pocketed content companies for faster access to end users.

So there you have it: 18 companies "promise" to abide by the neutrality rules, but zero (to date) will commit to putting it in writing in any meaningful way.

Why It Matters

The FCC **voted this week**, 2-1, to move forward with a plan that would kill off the 2015 Open Internet Rule.

That rule recognizes that your ISP has both the ability and the financial incentive to speed up, slow down, charge for, or otherwise commit shenanigans with some of your internet traffic, and preemptively prohibits them from doing that.

Absent the law, ISPs will be free to treat your traffic however they like, regardless of if it benefits you or not.

The claim from both the industry and from the FCC majority is that by stripping broadband providers of their common carrier designation, authority over them can return to the FTC, which

would then enforce rules against their messing with your traffic. But that has two big, glaring holes in it.

For one thing, the FTC can't really make new rules — certainly not efficiently or quickly, at any rate. But the other, more important thing is that the FTC can only really intervene in the gulf between what a company *promises* and what that company *does*.

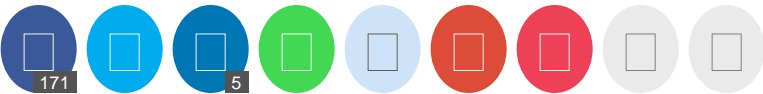
If a company says in its terms of service that “we will never block access to online content,” and then blocks it, then the FTC might be able to step in since that could be considered a deceptive business practice. However, if that company’s terms say nothing — or even worse, if they sneak in language that explicitly allows the company to block, throttle, or prioritize certain online content — then the FTC would have little or no reason to bring a case.

In other words: If we do lose the Open Internet Rule and Title II regulation for ISPs, then the only thing forcing them to adhere to open internet principles is the promise they make to you in writing. And if they won't even make that promise, then there's absolutely nothing at all.

May 19, 2017 By [Kate Cox](#)  @kcoxdc

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